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Supreme Court of the United States

October Term, 1959

No. ~~939~~ 90

OLIVER ARSENAULT, FRANK FAZEKAS, WILLIAM PISTEY and MATTIE L. SYKES,
Petitioners,

against

GENERAL ELECTRIC COMPANY,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

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Supreme Court of the United States

October Term, 1960

No.

OLIVER ARSENAULT, FRANK FAZEKAS, WILLIAM PISTEY and MATTIE L. SYKES,

Petitioners,

against

GENERAL ELECTRIC COMPANY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Errors of Connecticut entered in the above entitled case on January 8, 1960.

Opinions Below

The opinions of the Connecticut Superior Court for Fairfield County (R. 5, 19) are printed in the Appendix hereto, *infra*, pp. 16 *et seq.* The opinion of the Supreme Court of Errors of Connecticut (R. 27), printed in the Appendix hereto, *infra*, p. 12, is reported in 147 Conn. 130, 157 A. 2d 918.

Jurisdiction

The judgment of the Supreme Court of Errors of Connecticut was made and entered on January 8, 1960 (R. 27); page 15, *infra*. A motion for reargument filed on January 27, 1960 was denied on February 17, 1960 (R. 32). The jurisdiction of this Court is invoked under 28 U. S. C.

§ 1257(3) since petitioners claim rights and privileges under the Labor Management Relations Act, 1947, § 9(a), 29 U. S. C. § 159.

Questions Presented

1. Whether the statutory right of employees "to present grievances to their employer and to have such grievances adjusted" [§ 9(a) of the Labor Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. § 159] includes the power by them to compel arbitration of their dismissal under a collective labor agreement which provides for arbitration as the terminal point of the grievance machinery.

2. Whether such power exists where their collective bargaining agent is derelict in its statutory duty of fair representation under Sections 7 and 9(a) of the Labor-Management Relations Act, 1947.

Statutes Involved

The federal statutory provisions involved are Sections 7 and 9(a) of the Labor-Management Relations Act, 1947, 61 Stat. 136, 29 U. S. C. A. §§ 157, 159, which read as follows:

> Section 7. Right of employees as to organization, collective bargaining, etc.
>
> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title.

Section 9 (a). Representatives and elections—(a) Exclusive representatives; employees' adjustment of grievances directly with employer

> Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment.

The arbitration laws of the State of Connecticut under which the suit was instituted are §§ 8151 and 8153 of the 1949 revision of the General Statutes of Connecticut (now §§ 52-408 and 52-410, General Statutes of Connecticut, Revision of 1958, Vol. IX), which read in relevant part as follows:

> Sec. 8151. AGREEMENTS TO ARBITRATE. An agreement in any written contract, or in any separate writing executed by the parties to any written contract, to settle by arbitration any controversy thereafter arising out of such contract, or out of the refusal to perform the whole or any part thereof, * * * shall be valid, irrevocable and enforceable, except when there shall exist sufficient cause at law or in equity for the avoidance of written contracts generally.
>
> Sec. 8153. APPLICATION TO SUPERIOR COURT. A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an application thereunder may make application to

> the superior court of the county in which one of the parties resides * * *, for an order directing the parties to proceed to arbitration in compliance with their agreement. * * *

Statement of the Case

Petitioners were employed for many years by the Respondent, General Electric Company, under a collective labor agreement between the Respondent and International Union of Electrical, Radio & Machine Workers-CIO and its affiliated local, Local 203 (herein referred to, respectively, as the Union and the Local). Two of the Petitioners were members of the Union and Local. All of them were in the bargaining unit represented by the Union and the Local. By virtue of their long employment, Petitioners had accumulated considerable seniority, valuable pension rights and other employment benefits (R. 11).

The contract provided for the usual settlement of grievances by consultation with the Respondent and, absent agreement, by arbitration "upon written request of either the Union or the Company" (R. 9-10).

Petitioners were suspended and discharged without just cause (R. 11). Although they requested that their local officers process the grievances "said officers in breach of their duty to the plaintiffs wrongfully neglected and refused to take up said grievances" (R. 11). Indeed, the said officers refused even to consider the discharge grievances and to pass upon the merits thereof (R. 12). Since the Union "would have nothing to do with their grievances" (R. 11) and would not invoke the grievance machinery of the agreement on their behalf, Petitioners brought suit in the Superior Court of Connecticut to compel the Respondent to proceed to arbitrate the propriety of their suspensions and discharges in accordance with the agreement.

The suit was dismissed by the Superior Court, and the dismissal affirmed by the Supreme Court of Errors, on the ground that the Petitioners, as employees, did not have the right to seek such adjustment of their disputes (R. 28).

There thus was presented to the Connecticut Supreme Court Petitioners' claims as to a "right [and] privilege * * * under the statutes of * * * the United States" [28 U. S. C. § 1257 (3)]. This assertion of right to present and adjust grievances through arbitration was asserted in the complaints (R. 10-13), was contested by the Respondent's demurrers (R. 16) and was the subject of rulings by the Superior Court (R. 7-8, 19-21). It was discussed in the opinion of the Supreme Court of Errors (R. 27, 28).

Furthermore, petitioners' claim of the right to adjust their grievances by arbitration was not made abstractly but in the context of a claim of the collective bargaining agent's dereliction of its statutory duty of fair representation (R. 11-12).

This claim of failure to carry out the representative duties of a collective bargaining agent is admitted for purposes of this litigation since the case was decided upon a demurrer to the amended complaint (R. 19-21). Therefore, this petition presents directly to this Court the additional question adversely disposed of below as to Petitioner's right under the Labor-Management Relations Act of 1947 (hereinafter referred to as the Act) to compel arbitration of their grievances as a consequence flowing from the statutory agent's breach of its duty of fair representation. The state court was an appropriate tribunal in which to enforce Petitioner's federal rights. See *Mondou* v. *N. Y., N. H. & Hartford R. R. Co.*, 223 U. S. 1; *Claflin* v. *Houseman*, 93 U. S. 130, 136, 137.

Reasons for Granting the Writ

1. There is presented to this Court for the first time the question as to whether § 9(a) of the Act gives employees the right to present and adjust grievances up to and including the contractually established arbitral process, particularly where their collective bargaining agent has been derelict in its statutory duty of representation.

Section 9(a) of the Act authorizes the majority representative of the employees to act as their exclusive bargaining agent. It also provides that "any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted."

This is an extension of the right given by the predecessor statute "to present grievances to their employer" [§ 9(a) of the National Labor Relations Act, 49 Stat. 499, 29 U. S. C. A. § 159(a)]. It has been described by this Court as among the employees' "substantial rights" (Mr. Justice Frankfurter in *Ass'n of Westinghouse Salaried Employees* v. *Westinghouse*, 348 U. S. 437, 443, ftn. 2).* Similar rights in the railway labor field were described by this Court in another case as "fundamental." *Elgin, Joliet & Eastern Railway Co.* v. *Burley, et al.*, 325 U. S. 711, 736, adhered to on rehearing, 327 U. S. 661.

One of the critical problems in industrial democracy today is the place of the individual employee, faced as he is by a powerful employer and a labor union endowed by statute with collective bargaining strength. See Mr. Justice Douglas in *America Challenged* (1960) 14-15. One aspect of the problem is the scope of the employee's right to settle and adjust his own grievances up to and including the established arbitral machinery.

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* Mr. Justice Douglas' dissenting opinion, *id.* at 467, also points out that "the right of individual employees to present their own grievances is recognized by the Act."

Congress has shown increasing concern with this matter. This is reflected not only in the proviso to 9(a) but in the Congressional committee reports on the subject (H. Rep. 245, 80th Cong. 1st Sess.; S. Rep. No. 105, 80th Cong. 1st Sess.).*

Eminent students have joined with Congress in this concern. Thus, while Professor Cox believes that, absent discrimination, control should vest in the Union, he observes:

> "From the viewpoint of the individual employee there are grave risks in giving the bargaining representative untrammeled control over the prosecution of grievances." (Cox, *Rights Under A Labor Agreement*, 69 Harv. Law Rev. 601, 630 (1956))

Even greater concern for the individual appears in the Report of Committee on Improvement of Administration of Union-Management Agreements to the American Bar Association (50 N. W. L. Rev. 143 (1955).

2. The right of individuals to present and adjust grievances must be more than the right to verbalize their existence. In the realities of labor relations, it must mean the right to exhaust all available machinery for the determination of such disputes. Arbitration is the usual and accepted method of adjusting all unresolved grievances. It is the last step in the grievance procedure and becomes the terminal point in the whole grievance process. See *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U. S. 448, 449. Denial of the right to utilize the last step of the grievance machinery emasculates the right granted by the proviso to Section 9(a).**

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* This concern was most drastically manifested by passage of the Labor-Management Reporting & Disclosure Act of 1959, P. Law No. 86, 86th Cong., 1st Sess., 73 Stat. 519.

** In the realities of modern social and economic life, it is no answer to allocate the employee to an action at law for money damages while denying him continued employment.

Even under the more restricted proviso to the National Labor Relations Act, complete utilization of the grievance machinery was sanctioned by the National Labor Relations Board. The Board, in discussing the earlier version of the proviso to 9(a) which was less protective of individual employee rights, stated: "Failing agreement of all three parties, any dissatisfied party may carry the grievance through subsequent machinery until the grievance procedure is exhausted." *Matter of Hughes Tool Company*, 56 N. L. R. B. 981, 982. The individual employee was one of the three parties to which the Board referred. The Court of Appeals for the Fifth Circuit, in modifying the Board's decision so as to grant greater rights to the employees, agreed with its conclusion that "individuals and groups may, under the statute, fully prosecute their grievances through all stages and appeals." *Hughes Tool Co. v. NLRB*, 147 F. 2d 69, 73 (C. A. 5, 1945). The language in the *Hughes Tool* case supports Petitioners' view, as Professor Cox has recognized (*Some Aspects of the Labor-Management Relations Act*, 1947, 61 Harv. L. Rev. (1948), 274, 300). This Court's opinion in the *Elgin* case, *supra*, although dealing with the Railway Labor Act, likewise in principle supports Petitioners. See also *Matter of Federal Telephone & Radio Co.*, 107 N. L. R. B. 649, 654 (1953).

3. The existence of this important issue has been recognized by this Court and is a question still open for adjudication. As the Court said in *Textile Workers of America v. Lincoln Mills of Alabama*, *supra*, ftn. 9:

> "Whether there are situations in which individual employees may bring suit in an appropriate state or federal court to enforce *grievance rights* under employment contracts where the collective bargaining agreement provides for arbitration of those grievances is a question we do not reach in this case." (Emphasis ours.)

4. The second question presented arises in the context of the failure of the collective bargaining agent to carry out its statutory duty under Sections 7 and 9(a). This Court has repeatedly recognized the responsibility of the exclusive bargaining agent under the various labor relations laws to carry out that duty "to make an honest effort to serve the interests of all of those members, without hostility to any." *Ford Motor Co.* v. *Huffman*, 345 U. S. 330, 337; *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192; *Conley* v. *Gibson*, 355 U. S. 41. It has not had occasion to consider the relationship between the duty of fair representation and the right of employees to adjust their own grievances which is presented by this case. The Court of Appeals for the Fifth Circuit in the *Hughes* case, *supra*, did hold that the Union's duty of fair dealing applied specifically to the handling of grievances. A number of the lower courts have tended in this direction. Thus, while the weight of authority in these lower courts is against the employee's right to compel arbitration generally, it has been recognized that an exception may exist where the Union has been derelict in its duty. See, *e.g. Donato* v. *American Locomotive Corp.*, 283 App. Div. 410, 417, aff'd 306 N. Y. 966, to the effect that where "arbitration is the exclusive remedy under the contract the employee may demand arbitration if the union is neglectful of his interest." As has been said:

> "While the rule which bars an individual employee from bringing an action on the contract when the Union is unwilling to take the case to arbitration is sound if the Union has made an adjustment or is satisfied that the grievance lacks merit, nevertheless it would work an injustice in situations where the Union is unwilling to press the claim because of indifference or reluctance to suffer the expense. * * * One solution would be to open arbitration proceedings to individual grievants." Cox, *Rights Under a Labor Agreement*, 69 Harv. L. Rev. 601, 652 (1956).

5. While the proviso to Section 9(a) in one form or another has been in effect for twenty-five years and has been the subject of considerable controversy before the National Labor Relations Board and the courts, it has never been interpreted by this Court. Commentators of special competence hold radically different views as to the meaning of the proviso and these differences, of course, can only be resolved by this Court. This Court has ruled upon the consequences of the majority agent's failure to *negotiate* a contract fairly. *Steele, supra.* This case presents the related problem of the consequences of a failure to *administer* the contract fairly. This is a question of substance not heretofore determined by this Court.

The narrow construction given by the Court below to Section 9(a) appears to be in conflict with the decisions of two Circuits, *National Labor Relations Board* v. *North American Aviation, Inc.*, 136 F. 2d 898 (C. A. 9, 1943); *Hughes Tool Co.* v. *NLRB*, 147 F. 2d 69, 73 (C. A. 5, 1945). It also appears to be in conflict in principle with this Court's decisions above relating to the rights of self-organization and collective bargaining and the duty of the collective bargaining agent.

6. The issues in this case are of considerable public importance. Developments in our national economy and in our federal labor laws have resulted in a tremendous concentration of economic power in trade union and employer groups. In this context industrial democracy and social well-being, together with the individual's right to earn a livelihood depend upon his ability to protect his employment status. Congress' intention, embodied in the Act, to grant such protection, should properly be enforced by the courts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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May 15, 1960.

APPENDIX

Opinion of the Supreme Court of Errors of the State of Connecticut

OLIVER ARSENAULT ET AL., v. GENERAL ELECTRIC COMPANY

Application for an order directing the defendant to proceed with arbitration, brought to the Superior Court in Fairfield County, where a demurrer to the application was sustained, *Troland, J.*, a demurrer to the amended application was sustained, *Comley, J.*, and, the plaintiffs failing to plead further, judgment was rendered dismissing the amended application, from which the plaintiffs and the defendant appealed. *No error.*

Samuel Gruber, for the appellants-appellees (plaintiffs).

Norman K. Parsells, with whom, on the brief, was *John Barron*, for the appellee-appellant (defendant).

MURPHY, J. The plaintiffs allege that their discharge from employment by the defendant in 1957 was without just cause. They seek an order directing the defendant to arbitrate their grievances under the provisions of the collective bargaining agreement existing between the defendant and the International Union of Electrical, Radio and Machine Workers (C.I.O.), hereinafter referred to as the union, and its affiliated local, No. 203. The defendant demurred to the amended complaint. The court overruled the first two grounds of the demurrer but sustained it on the third ground, that the right to arbitrate was restricted to the union and the defendant. Judgment was rendered for the defendant after the plaintiffs failed to plead further. The plaintiffs have appealed. The defendant has taken a cross appeal, discussion of which is unnecessary in the view we take of the case. In fact, the cross appeal was improper. General Statutes § 52-263; *Bartlett* v. *Administrator*, 142 Conn. 497, 509, 115 A. 2d 671; *Lavery's Main Street Grill, Inc.* v. *Hotel Employees Union*, 146 Conn. 93, 104, 147 A.2d 902.

The material allegations of the amended complaint, which are admitted for the purposes of the demurrer, follow. Since 1955, the union, in conjunction with its locals,

has been the exclusive bargaining representative of the employees at the defendant's Bridgeport plant. The four plaintiffs were employed at the plant. All were members of the bargaining unit represented by the union and the local. Two were members of the union and the local. Three of the plaintiffs were suspended in 1956 from their employment by the company. They requested the local to process their grievances under the provisions of the collective bargaining agreement. The local refused. The three then met with company management. Representatives of the union local attended the meeting but did not participate. The defendant advised the three plaintiffs that the suspensions would stand and that further steps under the grievance procedure would be futile. Thereafter, the three were discharged. Within a short time, the fourth plaintiff was suspended and then discharged.

The agreement (art. 13) provides a three-step grievance procedure. Individual grievances cannot be processed otherwise. The first step is at the shop level, the second at the local management level, and the third at the headquarters or national level. The employee or his steward can initiate the grievance at the first step. If the matter is not settled, the local may proceed with it on through the second step. If the grievance is still unsettled, it can, at the third step, be referred to the national officers of the union for discussion with executives of the company. The agreement further provides (art. 15) that it is to be construed according to the law of the state of New York and that grievances, including unjust discharges, remaining unsettled after full processing under the grievance procedure are to be submitted to arbitration on the written request of either the union or the company. Neither the local nor the union has processed the plaintiffs' grievances, and the union has not sought arbitration.

The plaintiffs maintain that under the terms of § 9 (a) of the Taft-Hartley Act, 61 Stat. 143, 29 U. S. C. § 159(a), they have the right to compel the defendant to arbitrate their grievances despite the fact that the agreement itself

confers no such right upon them. The section reads: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment." The proviso in this section does no more than to assure to the employee the right to present his grievance directly to his employer to see if it can be settled. Three of the four plaintiffs in this action have availed themselves of that right.

The collective bargaining agreement limits the right to arbitrate to the union and the company. No provision is made for arbitration at the request or demand of an employee. Without such a provision in the contract, the plaintiffs cannot compel the defendant to arbitrate. *Calka* v. *Tobin Packing Co.*, 9 App. Div. , , 192 N. Y. S. 2d 886, 888; see *Item Co.* v. *New Orleans Newspaper Guild*, 256 F. 2d 855, 856, cert. denied, 358 U. S. 867, 79 S. Ct. 98, 3 L. Ed. 2d 99; *Parker* v. *Borock*, 5 N. Y. 2d 156, 161, 156 N. E. 2d 297. The agreement, unlike that in *Gilden* v. *Singer Mfg. Co.*, 145 Conn. 117, 118, 139 A.2d 611, does not contain language which affords to an employee the opportunity, personally, to seek arbitration. The court properly sustained the defendant's demurrer to the amended complaint upon the third ground.

There is no error on the plaintiffs' appeal; the defendant's appeal is dismissed.

In this opinion the other judges concurred.

Judgment of the Supreme Court of Errors of the State of Connecticut

At a Supreme Court of Errors, holden at Hartford, on the first Tuesday of November 1959

No. 4735

—o—

OLIVER ARSENAULT *et als.*

vs.

GENERAL ELECTRIC COMPANY

On Appeal from the
SUPERIOR COURT FOR FAIRFIELD COUNTY AT BRIDGEPORT
No. 4735

—o—

This appeal by the Plaintiff, claiming error in the process, record and judgment, and in the proceedings and decision of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts on file in this Court, was allowed by the Superior Court, for Fairfield County at Bridgeport, on the 24th day of October 1958 and came to this Court at its session at Hartford, on the first Tuesday of November 1958; and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said Superior Court, there is no error.

It is therefore considered and adjudged that there is no error and that the appellee recover of the appellant $ costs.

By the Court,

Date of Judgment January 8, 1960.

Decision Announced January 19, 1960.

J. LEO CAMPANA,
Clerk.

Memorandum of Decision of the Superior Court of the County of Fairfield (Filed December 17, 1957)

This is an application by former employees of the defendant, who have been discharged, for an order directing the defendant to proceed with arbitration of their claimed grievances, in accordance with a collective bargaining agreement between the General Electric Company and the International Union of Electric, Radio & Machine Workers —CIO and its affiliated Local 203.

Said agreement covers the wages, rates of pay, hours of employment and the conditions of employment of all employees of the defendant company at its Bridgeport plant.

Article XV of said agreement provides for arbitration of grievances in part as follows:

> 1. Any grievance which remains unsettled after having been fully processed pursuant to the provisions of Article XIII, and which involves either,
>
> (a) the interpretation or application of a provision of this Agreement, or
>
> (b) a disciplinary penalty (including discharge) imposed on or after the effective date of this Agreement, which is alleged to have been imposed without just cause,
>
> shall be submitted to arbitration upon written request of either the Union or the Company, provided such request is made within 30 days after the final decision of the Company has been given to the Union pursuant to Article XIII, Section 2(c). For the purpose of proceedings within the scope of (b) above, the standard to be applied by an arbitrator to cases involving disciplinary penalties (including discharges) is that such penalties shall be imposed only for just cause. . . ."

Memorandum of Decision of the Superior Court of the County of Fairfield (Filed December 17, 1957)

The application of the plaintiffs contains no allegation that a written request for arbitration has been made by either the Union or the Company, as provided in above quoted section of the agreement.

The defendant has demurred on three grounds. Briefly stated they are:

1. that it is not alleged that the plaintiffs are parties to a written agreement for arbitration, that it appears they are not parties to any such agreement, and that this application is based on a General Statute (Sec. 8153) which limits the right to make such application to "a party to a written agreement for arbitration."

2. that it does not appear that the grievances of the plaintiffs have been fully processed under the provisions of the agreement as required prior to arbitration thereunder, and

3. that under the agreement only the Union or the Company may require a grievance to be submitted to arbitration, and that plaintiffs as individuals have no rights to have any grievance submitted to arbitration.

The plaintiffs claim that their application is not subject to a demurrer on the ground that the statute provides:

> "The parties shall be considered as at issue on the allegations of the complaint unless the defendant shall file answer thereto within five days from the return day . . ."

The defendant has filed answer as required by the statute. Its answer is a challenge to the legal sufficiency of the complaint, maintaining that as a matter of law the

plaintiffs are not entitled to the remedy sought on their allegations. This answer in accordance with established practice is entitled "demurrer," and is proper and permitted under the statute.

On the first question as to whether the plaintiffs are "parties to a written agreement," many cases have been cited from various jurisdictions, in which it has been held that employees of a Company, working under an agreement negotiated between their employer and a labor organization are not "parties to the contract." Without citing these cases, the Court is of the opinion that such a construction is too narrow and not valid under long established principles. We are dealing with a collective-bargaining agreement, negotiated by and between the General Electric Company and the International Union of Electrical, Radio and Machine Workers (CIO) acting for itself and in behalf of listed IUE (CIO) locals certified as collective bargaining representatives of the Company employees. The Company thereunder recognizes the Union as the "exclusive bargaining representative of employees" in respect to rates of pay, wages, hours of employment and other conditions of employment.

The power of the bargaining representative designated by the majority of the employees in an appropriate unit is derived from sections 8(a)(5) and 9(a) of the National Labor Relations Act. A union so designated becomes "the exclusive representative of al. the employees in such unit." The relation of the Union to the employees is one of agency. The Union acts on their behalf. The employer in bargaining with the Union has notice that the Union is acting for the employees whose identity as a group, if not as individuals is fully disclosed. The fact that their names do not appear in the contract does not prevent the employees from being

unnamed principals under the contract and thus "parties." This is in accordance with the policy of the Wagner Act which compels employers to bargain collectively with their employees. The Union as a legal entity is bound by the contract, and the employees, whose collective bargaining agent is the Union, are also bound by its terms. They are not named as individuals but each and every employee for whom the Union has conducted the collective bargaining negotiations, is an unnamed principal, the real party in interest for every benefit conferred, as well as for every burden assumed under the contract ultimately agreed on and signed by the employer and the collective bargaining agent of the employees. The fact that the Union as a legal entity, under the contract also secures benefits and also binds itself to burdens, does not change the primary purpose of the instrument.

The first ground of demurrer is thus believed to be not well taken.

However, the employees are bound by the agreement and so if by its terms it provides for an adjustment of their grievances, including arbitration, they are bound to abide by such terms. The adjustment of the individual grievance must not be inconsistent with the terms of the collective bargaining contract or agreement in effect. The agreement in this case creates, as a result of collective bargaining, a relationship between the employer and the Union involving the day to day administration of the collective agreement. The processing of grievances beyond the first step is reserved to the Union, and the Company and the Union are alone granted the right to request arbitration. (See Articles XIII and XV of the agreement.) Thus the Company and the Union are the only parties to the agreement entitled to apply to this Court for an order

Memorandum of Decision of the Superior Court of the County of Fairfield (Filed December 17, 1957)

directing the parties to proceed to arbitration in compliance with their agreement.

General Statutes, Conn. 1949, Section 8153.

The demurrer is sustained on the second and third grounds stated therein.

Rules of law supporting the decision herein are discussed at length in "Rights Under a Labor Agreement" Archibald Cox—Harvard Law Review, Vol. 69—pages 601-652, and "Rights of Individual Workers in Union-Management Arbitration Proceedings"—Yale Law Journal, Vol. 66—pages 946-954, also Textile Workers Union vs. Lincoln Mills, 353 U. S. 448 (1957) 1 L. Ed. 2d 972, 77 Sup. Ct.

TROLAND, J.

Filed Dec. 17, 1957.

Memorandum of Decision of the Superior Court of the County of Fairfield (Filed September 10, 1958)

First Ground of Demurrer

This ground of demurrer is based chiefly upon the claim that, since none of the plaintiffs is "a party to a written agreement for arbitration" within the meaning of G. S., Sec. 8153, they have no standing to make application to the Superior Court for an order directing the defendant to proceed with arbitration. Judge Troland, in his memorandum of decision on the demurrer to the original application, overruled this claim. There is nothing in the amended complaint or in the present demurrer which changes this aspect of the case. It is true that the defendant now cites several recent cases from other jurisdictions which oppose Judge Troland's ruling and it calls attention to a persuasive article by Professor Gregory in "Labor and the Law," Second Revised Edition, pp. 491-494.

However, in addition to this court's reluctance to disturb the ruling of another judge, there is the recent case of Gilden v. Singer Mfg. Co., 145 Conn. 117, decided March 4, 1958. Although in that case there is no discussion of the question whether the plaintiff was a party to the contract within the meaning of the statute, the decision necessarily implies that he was for, otherwise, the court would have had no power to entertain his application. Moreover, on p. 118, he is described as "a beneficiary of the contract" and, by necessary inference is recognized as a third-party beneficiary.

The first ground of demurrer is overruled.

Second Ground of Demurrer

This ground of demurrer is based upon the proposition that the plaintiffs have failed to allege that they have completed the three steps of the "Grievance Procedure" speci-

fied in Article XIII of the contract and that the right to arbitration provided for in Article XV comes into existence only as to a "grievance which remains unsettled after having been fully processed." Judge Troland sustained this ground of demurrer to the original complaint. This court would regard that ruling as final except for the fact that the complaint has been radically amended to bring into the picture many facts, admitted by the present demurrer which were not alleged in the original complaint and were not before Judge Troland. In Paragraphs 8, 9, 10, 13, 14 and 15 there are many averments as to failure of the Union and its officers to protect and safeguard the plaintiffs' rights by properly processing their grievances through the three steps required by the contract as a condition precedent to arbitration. Whether or not any default on the part of the Union in its duties to the plaintiffs is now a sufficient excuse for their failure to process their grievances completely, it is not now necessary to decide. For there is another allegation contained in the amended complaint which, in the view of the court, does excuse that failure. That is in paragraph 11 and reads as follows: "At this meeting the defendant advised the plaintiffs in substance that the suspensions would stand and that it would be futile for the plaintiffs to pursue any further steps under the grievance procedure because its position was final and not subject to change."

It is axiomatic that the law does not require the performance of a futile and unnecessary act. Grant v. Pagter, 133 Conn. 646, 649; Tracy v. O'Neil, 103 Conn. 693, 699. By its demurrer the defendant has admitted that it told the plaintiffs that any further steps in the processing of their grievances would be useless and that it would not alter its position. The plaintiffs were entitled to act on the assumption that the defendant meant just that. Grant v. Pagter, supra, p. 649. Thus the present complaint is not defective, as was the original, because of the plaintiffs' failure to allege the complete processing of their grievances.

Memorandum of Decision of the Superor Court of the County of Feirfield (Filed September 10, 1958)

THIRD GROUND OF DEMURRER

This ground of demurrer rests upon the claim that Article XV of the contract, by express language, confers the right to arbitration only upon the Union or the Company. Section 1 of that Article provides that a grievance "shall be submitted to arbitration upon written request of either the Union or the Company," and Section 2(a) provides that "within 10 days following a written request for arbitration of a grievance, the Company or the Union may request the American Arbitration Association to submit a Panel of names from which an arbitrator may be chosen."

In Gilden v. Singer Mfg. Co., 145 Conn. 117, the court had before it a contract which provided: "After the receipt of a decision, if the aggrieved party or the Union does not take the grievance to the next higher step or to arbitration . . . the grievance shall be deemed to have been settled and shall not be subject to further appeal or to arbitration." The court held that this reference to the right of the aggrieved party to arbitration was sufficient to confer that right upon an individual employee even though another clause in the contract provided that a grievance "may be taken either by the Union or the Company to arbitration."

In the contract now before this court there is no language such as that in the Gilden case to indicate that the parties intended to confer the right to arbitration on the "aggrieved party." That right is expressly reserved only to the Company or the Union. This ground of demurrer is well-taken, as pointed out by Judge Troland.

The first and second grounds of demurrer as to all the plaintiffs are overruled. The third ground of demurrer as to all the plaintiffs is sustained.

COMLEY, J.

Filed Sept. 10, 1958.